

# DISCLAIMER

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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 15, 1999

APPLICATION OF

ROBERT A. WINNEY d/b/a/ THE  
WATERWORKS COMPANY OF FRANKLIN  
COUNTY

CASE NO. PUE980811

To revise tariff

## FINAL ORDER

On November 16, 1998, the Commission's Division of Energy Regulation received notice from Robert A. Winney, doing business as The Waterworks Company of Franklin County ("Mr. Winney" or "Company"), of its intent to revise its rates, rules and regulations for water service rendered on and after January 1, 1999, pursuant to the Small Water or Sewer Public Utility Act.<sup>1</sup> The Company proposed to increase its rates for water service from \$67.50 per quarter to \$80.50 per quarter, and to increase the rates for availability service from \$60.00 per year to \$100.00 per year. The Company also proposed a connection or hook-up charge of \$1,250.00 and a charge of \$50.00 to restore service that had been disconnected for non-payment of a bill or a violation of its rates, rules and regulations. The proposed rates, charges and fees were to apply to service rendered on and after January 1, 1999.

By Order dated December 7, 1998 ("December 7 Order"), the Commission allowed the proposed rate for water service to go into effect on an interim basis, subject to refund with interest, for service rendered on and after January 1, 1999. The Commission also suspended the proposed availability fee and hook-up and connection

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<sup>1</sup> Sections 56-265.13:1 et seq. of the Code of Virginia.

fees for 60 days, to and through March 1, 1999, after which the proposed fees would be interim and subject to refund with interest until a final determination is made in this proceeding. The Commission established a procedural schedule, assigned this matter to a hearing examiner, and directed that a public hearing be held on February 3, 1999.

The public hearing was held as scheduled. Four public witnesses appeared in opposition to the rates increase. Mr. Winney failed to appear, and no counsel appeared on the Company's behalf.

On February 25, 1999, the Examiner issued his Report, recommending that the application be dismissed. The Examiner stated that while the Company appeared to have complied with the initial notice requirements of § 56-265.13:5 of the Code of Virginia, there was no proof of that fact. The Examiner found that there was no evidence that the Company had complied with the notice requirements of the December 7 Order or with Rule 8:2(a)(iii) of the Commission's Rules of Practice and Procedure.<sup>2</sup> Further, the Examiner stated that applicants carry the burden of showing that a proposed rate increase is justified and, because no one appeared on the Company's behalf, this burden was not met.

On March 18, 1999, a long letter from Mr. Winney was filed in which he maintains that he does not have sufficient funds to cover the Company's expenses and that he has complied with the Commission's directives to the best of his ability. This letter also contains a number of assertions that are contrary to Staff's statements and contentions.

NOW, UPON CONSIDERATION of the Hearing Examiner's February 25, 1999 Report and the applicable rules and statutes, the Commission finds that the Hearing Examiner's findings and recommendations are reasonable and should be adopted. The record shows that the Company failed to comply with the public notice requirements of

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<sup>2</sup> Rule 8:2(a)(iii) requires that a copy of the notice stating the time, place and nature of the hearing, the date such notice was given, and the method of service be introduced into the record.

the December 7 Order and of the Commission's Rules of Practice and Procedure.<sup>3</sup> As the Examiner stated, there is no evidence that Mr. Winney complied with any of the notice requirements. Further, the December 7 Order required Mr. Winney to take specific actions to ensure that all customers would be aware of the proposed rate increase. Specifically, the Commission directed Mr. Winney to promptly make available for public inspection copies of the proposed tariff and all materials to be filed with the Clerk of the Commission at the Franklin County Public Library; to serve a copy of the December 7 Order on all customers; and to file with the Clerk of the Commission a certificate stating the date of mailing and the name and mailing address of all customers served. There is no evidence that Mr. Winney did any of these things.

In addition to his failures concerning notice, Mr. Winney has made no showing that his proposed rate increase is reasonable and should be approved. He failed to appear at the hearing and thus did not offer any testimony or evidence. In short, the Company has wholly failed to make its case and, therefore, has failed to meet its burden of showing the rate increase is justified.

Considering the above, we find that the only proper course is to dismiss this matter, with the result that the rates and charges prescribed in Case No. PUE970119 will remain in effect.<sup>4</sup>

The December 7 Order allowed the proposed water rates for service rendered on and after January 1, 1999, to go into effect on an interim basis and subject to refund with interest, and suspended the proposed availability fee and the hook-up and reconnection fee for 60 days, until March 1, 1999, at which time such fees would be allowed to go into effect on an interim basis and subject to refund with interest. Since we have dismissed this matter, Mr. Winney will be required to refund to his customers, with interest, any

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<sup>3</sup> Tr. at 25-26, 31-32, 38-39.

<sup>4</sup> We note that the Company's last rate application similarly was dismissed because of the applicant's failure to comply with the public notice requirements. *Application of Robert A. Winney d/b/a/ The Waterworks Company of Franklin County, For an increase in rates and charges*, Case No. PUE980057, Document Control No. 980830341, \_\_ S.C.C. Ann. Rept. \_\_ (Aug. 21, 1998).

monies received since January 1, 1999, for water service and availability fees in excess of the rates established in Case No. PUE970119, and any hook-up or reconnection fees collected since March 1, 1999.

Specifically, the Company is directed to credit \$26.00 to any customer who has not paid the interim water rate of \$80.50 per quarter for the first and second quarters of 1999, and \$26.76 (reflecting interest) to any customer who has paid the interim water service rate for the first two quarters of 1999.<sup>5</sup> Based on the foregoing, the quarterly rate for water service, payable in advance, due on or before July 1, 1999, for the third quarter of 1999 shall be \$41.50 ( $\$67.50 - \$26.00 = \$41.50$ ) for customers who did not pay the interim rates for the first two quarters of 1999, and \$40.74 ( $\$67.50 - \$26.76 = \$40.74$ ) for customers who have paid the interim rates; thereafter, the quarterly rate for water service shall return to \$67.50. The Company is directed to refund, on or before July 1, 1999, to any customer that paid an availability fee for the calendar year 1999, the difference between the interim rate and the previously approved rate, with interest, by check in the amount of \$41.55. Under the previously established rate schedule, the Company had no authority to charge hook-up fee or reconnection charges and therefore will be required, on or before July 1, 1999, to refund by check any such fees paid during the interim period. Accordingly,

**IT IS ORDERED THAT:**

- (1) This case is hereby dismissed.
- (2) Mr. Winney shall refund, with interest as discussed herein, all revenues collected from the application of the interim rates that were effective for service

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<sup>5</sup> We have calculated the interest on the ordered refunds using the prime rate value published in the Federal Reserve Bulletin for the first calendar quarter for 1999. If Mr. Winney desires to compute the interest based on the usual procedure, he must compute the interest from the date payment of each quarterly bill was due during the interim period until the date refunds are made, at average prime rate for each calendar quarter. The applicable average prime rate for each calendar quarter shall be the arithmetic mean, to the nearest one-hundredth of one percent, of the prime rate values published in the Federal Reserve Bulletin, or in the Federal Reserve's Selected Interest Rates (Statistical Release G.13), for the three months of the preceding calendar quarter. The interest required to be paid shall be compounded quarterly.

beginning January 1, 1999, to the extent such revenues exceeded the revenues that would have been produced by the rates prescribed in Case No. PUE970119.

(3) On or before July 1, 1999, the Company shall credit \$26.00 to customers who have not paid the interim water rates for the first and second quarters of 1999, and \$26.76 to customers who have paid the interim water service rate of \$80.50 per quarter for the first two quarters of 1999.

(4) On or before July 1, 1999, the Company shall make a refund by check in the amount of \$41.55 to each customer who paid an availability charge of \$100.00 for the year 1999.

(5) On or before July 1, 1999, the Company shall refund, with interest, by check any hook-up fees or reconnection charges paid during the period in which the interim charges were in effect.

(6) Insofar as is practicable, the Office of the General Counsel shall mail a copy of this order to every customer of Mr. Winney.

(7) On or before July 15, 1999, the Company shall file with the Clerk of the Commission, Document Control Center, State Corporation Commission, P.O. Box 2118 , Richmond, Virginia 23218-2118 the names and mailing addresses of all customers that were credited or paid a refund; the date the credit or refund was made; and the check number of each availability charge, hook-up fee, and reconnection charge refund that is made.